

FILED

OCT 24 2008

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *CI* DEPUTY

Brian C. Gonzalez (State Bar No. 140348)
LAW OFFICES OF BRIAN C. GONZALEZ
2533 S. Coast Highway 101, Suite 250
Cardiff by the Sea, California 92007
(760) 436-9529

William A. Munck (Texas State Bar No. 00786127)
Jamil N. Alibhai (Texas State Bar No. 00793248)
MUNCK CARTER, P.C.
600 Banner Place
12770 Coit Road
Dallas, Texas 75251
(972) 628-3600

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

FAXED**'08 CV 1992 BEN NLS**

GABRIEL TECHNOLOGIES
CORPORATION and TRACE
TECHNOLOGIES, LLC,

Plaintiffs,

CIVIL ACTION NO. _____

PLAINTIFFS' ORIGINAL COMPLAINT

vs.

QUALCOMM INCORPORATED,
SNAPTRACK, INC., and NORMAN
KRASNER,

Defendants.

COME NOW Plaintiffs Gabriel Technologies Corporation and Trace Technologies, LLC
(collectively, "Gabriel") and file their Original Complaint against Defendants Qualcomm
Incorporated ("Qualcomm"), SnapTrack, Inc. ("SnapTrack"), and Norman Krasner ("Krasner")
(collectively, "defendants"), as follows:

I. INTRODUCTION

1. Gabriel files this lawsuit to hold technology thieves responsible for their wrongful
conduct. The chief thief is Krasner, who on paper appears to be a prolific inventor with over 60
published domestic patents mostly related to global positioning satellite systems. As Gabriel

ORIGINAL

1 would find out the hard way, Krasner's prolific inventions are often based on the work of others,
2 and Krasner has made a career out of preparing, prosecuting, and procuring domestic and foreign
3 patents based on work done by others.

4 2. Krasner and SnapTrack entered into a license agreement with Loc8.net a/k/a
5 Locate Networks, Inc. ("Locate"), a predecessor-in-interest to Gabriel, ostensibly to jointly
6 develop technology for their mutual benefit. As it would turn out, SnapTrack and Krasner used
7 the relationship to obtain millions of dollars from Locate to keep SnapTrack afloat while
8 negotiating a billion dollar buyout. Unaware of the sinister intentions of SnapTrack and Krasner,
9 Locate brought to the table real technological value, which SnapTrack and Krasner stole for
10 themselves and for SnapTrack's eventual purchaser, Qualcomm. Over time, Krasner,
11 SnapTrack, and Qualcomm surreptitiously misappropriated Locate's valuable enabling
12 technology and other disruptive intellectual property rights.

13 3. Although it paid more than a billion dollars for SnapTrack's technology,
14 Qualcomm did not pay the true owner of much of that technology. Qualcomm took no steps to
15 correct ownership or inventorship of the patents with the United States Patent & Trademark
16 Office. Instead, Qualcomm wrongfully continued to file patents and patent applications based
17 on Locate's technology and failed to pay Gabriel, the true owner, for its many inventions and
18 patents.

19 4. Gabriel brings this suit to obtain payment for the technology unlawfully acquired
20 and used and to correct ownership and inventorship on what should be its patents.

21 **II. PARTIES**

22 5. Plaintiff Gabriel Technologies Corporation is a corporation organized pursuant to
23 the laws of the State of Delaware with its principal place of business in Omaha, Nebraska.
24
25

1 6. Plaintiff Trace Technologies, LLC is a limited liability company organized
2 pursuant to the laws of the State of Nevada. Trace Technologies, LLC is a wholly-owned
3 subsidiary of Gabriel Technologies Corporation.

4 7. Defendant Qualcomm is a corporation organized pursuant to the laws of the State
5 of Delaware. Qualcomm's principal place of business and United States headquarters is located
6 in San Diego, California. Qualcomm may be served with citation by serving its registered agent,
7 The Prentice-Hall Corporation System, Inc., 2711 Centerville Road, Suite 400, Wilmington,
8 Delaware 19808.

9 8. Defendant SnapTrack is a corporation organized pursuant to the laws of the State
10 of California. SnapTrack's principal place of business is located in California. Since its
11 acquisition by Qualcomm in 2000, SnapTrack is a wholly owned subsidiary of Qualcomm.
12 SnapTrack may be served with citation by serving its registered agent, Corporation Service
13 Company d/b/a CSC - Lawyers Incorporating Service, 2730 Gateway Oaks Drive, Suite 100,
14 Sacramento, California 95833.

15 9. Defendant Krasner is an individual who is a citizen of and resides in the State of
16 California. Upon information and belief, Krasner may be served with citation at 3 Lake Court,
17 Redwood City, California 94062.

18 **III. JURISDICTION AND VENUE**

19 10. This Court has subject matter jurisdiction over this action and Gabriel's claims for
20 correction of inventorship, patent ownership, declaratory judgment, and equitable patent
21 infringement pursuant to 28 U.S.C. §§ 1331 and 1338 as well as 28 U.S.C. §§ 2201 and 2202. In
22 addition, this Court has supplemental jurisdiction over the related state law claims asserted
23 herein pursuant to 28 U.S.C. § 1367.
24
25

11. Venue in this Court is proper under 28 U.S.C. §§ 1391 and 1400(b).

IV. FACTS APPLICABLE TO ALL COUNTS

Gabriel, Trace, and Locate.

12. Gabriel Technologies Corporation is a publicly-traded corporation focused on two rapidly growing segments of the homeland security market: asset tracking and physical security. Through its wholly-owned subsidiary, Gabriel Technologies, LLC, a Nebraska limited liability company, the company designs, develops, manufactures and sells a series of physical locking systems for the transportation and shipping industries collectively known as the War-Lok™ security system. Gabriel Technologies Corporation's other wholly-owned subsidiary, Trace Technologies, LLC ("Trace"), was formed to develop location based services to enable customers to track assets and personnel worldwide.

13. Locate, a Washington corporation, was formed to focus on location determining devices and location-based services.

14. Trace was developed as a joint venture entity between Locate and Gabriel. Trace subsequently acquired substantially all of the assets of Locate, including Locate's rights under the License Agreement with SnapTrack. Gabriel then acquired all of Locate's rights in Trace, which today operates as a wholly-owned subsidiary of Gabriel.

Krasner and SnapTrack.

15. In late 1998, the founders of Locate started discussing joint development projects with SnapTrack.

16. Although Locate was seeking opportunities to develop its existing business, Krasner saw Locate as providing access to two resources he wanted: (1) funds to keep

1 SnapTrack running while he was attempting to sell SnapTrack and (2) valuable enabling
2 technology that he could steal and wrongfully add to SnapTrack's patent portfolio.

3 17. While negotiating the terms of a potential venture, SnapTrack and Locate
4 discussed their intellectual property and how the parties could best work together.

5 18. Unlike SnapTrack, Locate negotiated in good faith and shared its experience in
6 the field of narrowband telecommunication networks for the purpose of collaborating with
7 SnapTrack.

8 19. At this time, SnapTrack was focused on broadband networks and assisted Global
9 Positioning System ("aGPS") technology and the development of related intellectual property.

10 20. Although SnapTrack was not as interested in narrowband networks because it was
11 concentrating its investment in broadband networks, SnapTrack liked the opportunity that Locate
12 presented. SnapTrack could continue to focus on broadband networks and sell itself to a
13 company focusing on broadband. At the same time, Krasner and SnapTrack could obtain patents
14 based on valuable enabling technology that Locate had already conceived of and was
15 implementing in the narrowband field.

16 21. SnapTrack hoped to find potential purchasers in the aGPS field who needed a
17 significant aGPS patent portfolio. In the aGPS market, such a patent portfolio would provide
18 incredible licensing opportunities to the owner of the patent portfolio and would create
19 significant barriers to entry for competitors.

20 **SnapTrack and Locate Enter Into the License Agreement.**

21 22. On August 20, 1999, SnapTrack and Locate entered into a License Agreement
22 (the "License Agreement"). Although titled a "License Agreement," the agreement was more
23
24
25

1 akin to a joint development agreement because the parties agreed to jointly develop and own
2 "Program Technology," as discussed below.

3 23. The stated purpose of the License Agreement was to allow Locate to obtain (i) a
4 license to use SnapTrack's aGPS software to develop location pager devices and related location
5 services and (ii) technical support and engineering services from SnapTrack related to its
6 software.

7 24. Locate agreed to pay SnapTrack millions of dollars in license and royalty fees in
8 exchange for the rights to use, make, or have made the SnapTrack Server Software and the
9 SnapTrack Client Software required for provisioning aGPS location-based services to Locate
10 customers.

11 25. As part of the License Agreement, Locate expressly protected its existing
12 intellectual property rights. To that end, Section 8, entitled "Proprietary Rights," provided:

13 Each party shall retain ownership of its respective patents, trade secrets,
14 copyrights, and other Intellectual Property Rights that are in existence as of the
Effective Date.

15 26. Because SnapTrack realized the value that Locate brought to the table, SnapTrack
16 agreed that "Program Technology," or items of work carried out by the parties in connection
17 with the License Agreement, would be jointly owned by Locate and SnapTrack.

18 27. In clear and unambiguous terms, section 8(b) of the License Agreement stated:

19 All Program Technology shall be jointly owned by and between the parties, with
20 each party owning an undivided, equal ownership interest in any such Program
Technology, and all rights therein shall be vested in [SnapTrack] and [Locate] as
joint and equal owners.

21 28. In addition to setting forth the parties' joint ownership interest, the License
22 Agreement further provided that this joint ownership interest was to be protected by the parties.
23 Section 8(b)(i) of the License Agreement stated:
24

1 The parties shall establish a process for identifying all Program Technology
2 Intellectual Property Rights. With respect to all such Program Technology so
3 identified, the parties shall establish a process for determining (1) which
4 intellectual property filing to make with respect to such Program Technology
(including but not limited to patent applications, reissues, and reexaminations,
copyright and trademark registrations, and similar intellectual property
registrations), (2) which party shall be responsible for such filings.

5 29. Thus, Locate endeavored from the outset to set up a process to protect intellectual
6 property rights pertaining to the Program Technology by requiring: (i) a process for identifying
7 all Program Technology Intellectual Property Rights; (ii) determination of the type of intellectual
8 property filings needed, *e.g.*, patent, copyright, etc.; and (iii) determination of which party would
9 be responsible for obtaining such intellectual property protection.

10 30. As it would turn out, Krasner and SnapTrack (and later Qualcomm) had no
11 intention of recognizing Locate's joint ownership of Program Technology or protecting Locate's
12 joint ownership interest.

13 **SnapTrack Finds a Buyer: Qualcomm.**

14 31. Although Qualcomm is no stranger to intellectual property disputes, a brief
15 history of Qualcomm's patent portfolio and business is necessary to understand Qualcomm's
16 acquisition of SnapTrack's—but in reality, Locate's—intellectual property.

17 32. Qualcomm was founded in 1985 to develop and patent a wireless technology
18 system known as Code Division Multiple Access (CDMA).

19 33. Instead of manufacturing its own cell phones, Qualcomm made money by
20 obtaining a large patent portfolio relating to CDMA and then licensing those CDMA patents to
21 cell phone manufacturers like Samsung, Ericsson, and Motorola.

22 34. In 1999, the year CDMA was included as standard technology for phones,
23 Qualcomm's licensing deals generated more than \$400 million in revenue.

1 35. Although still highly lucrative, many of Qualcomm's fundamental CDMA patents
2 were approaching expiration. To diversify its revenue sources, Qualcomm sought to strengthen
3 its patent portfolio by investing in certain disruptive technologies, including aGPS. Acquisition
4 of the SnapTrack patent portfolio was intended to allow—and actually did—Qualcomm to
5 dominate the aGPS market just as it had the CDMA market.

6 36. Qualcomm decided to acquire SnapTrack and its intellectual property and
7 technology and conducted due diligence with respect to that proposed acquisition.

8 37. Bruce Greenhaus, a Qualcomm vice president and registered United States patent
9 attorney, led a team of Qualcomm engineers and inventors involved in the SnapTrack due
10 diligence. At times, Greenhaus has falsely claimed that he alone was responsible for the due
11 diligence related to SnapTrack's intellectual property.

12 38. Initially, Qualcomm offered to make a sizeable investment in SnapTrack, but
13 Stephen Poizner, then Chief Executive Officer of SnapTrack, rejected that offer and insisted that
14 Qualcomm acquire SnapTrack outright. (Today, Poizner is the California Insurance
15 Commissioner and recently launched a 2010 gubernatorial exploratory committee.)

16 39. On January 26, 2000, Qualcomm announced that it was acquiring SnapTrack for
17 \$1 billion. In its press release, Qualcomm announced the acquisition as follows:

18 In a move designed to enable broad new applications for mobile location-based
19 services and wireless Internet systems, Qualcomm Incorporated (Nasdaq: QCOM)
20 today announced that it will acquire SnapTrack, Inc. of San Jose, Calif., a leader
21 in wireless position location technology. Combining SnapTrack's technology with
22 Qualcomm's innovative gpsOne™ technology will accelerate the introduction of
23 powerful location-enabled mobile phones and other devices utilizing Wireless
24 Assisted GPS™ (Global Positioning System) technology. The acquisition
25 provides Qualcomm with an even stronger patent portfolio covering Wireless
Assisted GPS. *SnapTrack's patents are necessary for the commercial viability of
any Wireless Assisted GPS system.* Under the agreement, SnapTrack will become
a wholly owned subsidiary of Qualcomm, and will continue its work on position
location technology and meeting its customer commitments. Qualcomm will pay

1 \$1 billion in stock for the acquisition of SnapTrack. Completion of the agreement,
2 which is subject to regulatory approval and other customary closing conditions, is
3 expected by mid-March of this year.

4 40. Focusing on SnapTrack's patent portfolio, Dr. Irwin Mark Jacobs, then chairman
5 and CEO of Qualcomm, stated, "SnapTrack's impressive technology strengths and patent
6 portfolio will provide Qualcomm with increased position location capabilities."

7 41. In describing SnapTrack's patent portfolio, Qualcomm acknowledged the
8 existence of the relationship and the License Agreement between Locate and SnapTrack, as
9 follows:

10 SnapTrack has nearly 50 patents, either issued or pending, that are critical to the
11 efficient, cost-effective deployment of Wireless Assisted GPS. SnapTrack has
12 royalty-bearing licensing agreements with Denso, DSPC/Intel, Loc8.net/Glenayre,
13 Motorola and Texas Instruments for patents and technology that cover the
14 deployment of assisted GPS-based wireless location systems, and an agreement
15 with Microsoft to integrate SnapTrack's solution into the Microsoft Mobile
16 Explorer smart phone platform.

17 42. At the time Qualcomm announced the acquisition, Locate had no reason to
18 believe that its technology had been misappropriated by Krasner and SnapTrack or that any of its
19 technology was involved in the acquisition. Even after the acquisition, Locate continued to
20 perform under the License Agreement.

21 43. During its due diligence (and after its acquisition of SnapTrack), Qualcomm and,
22 in particular, Greenhaus and his due diligence team ignored or disregarded both the intellectual
23 property provisions of the License Agreement and Locate's contributions to Program
24 Technology.

25 44. On March 2, 2000, Qualcomm announced that it had completed the acquisition of
26 SnapTrack, which became a wholly owned subsidiary of Qualcomm. Again, Qualcomm focused

1 on and touted "SnapTrack's patent portfolio of nearly 50 patents, either issued or pending, that
2 are critical to the efficient, cost-effective deployment of Wireless Assisted GPS systems."

3 45. As part of the acquisition, Krasner's SnapTrack stock was converted into
4 Qualcomm stock. Upon information and belief, Krasner and his wife received approximately
5 300,000 shares of Qualcomm stock then valued at \$139.56 per share. In connection with the
6 acquisition, Krasner became a "key employee" of Qualcomm.

7 46. In its press releases and SEC filings relating to the acquisition of SnapTrack,
8 Qualcomm never mentioned any other SnapTrack assets or even SnapTrack's revenues. Upon
9 information and belief, none of these items played a role in Qualcomm's acquisition of
10 SnapTrack. Instead, the sole value to Qualcomm and reason for the \$1 billion acquisition of
11 SnapTrack was the valuable intellectual property.

12 47. In acquiring SnapTrack, Qualcomm willfully ignored the fact that SnapTrack did
13 not solely own all of the intellectual property it and Krasner sold to Qualcomm for \$1 billion.

14 48. After acquiring SnapTrack's patent portfolio, Qualcomm set its sights on
15 achieving market dominance in the aGPS market as it had done with CDMA.

16 49. In 2002, Qualcomm announced that its gpsOne™ technology, which features
17 SnapTrack technology, "is the world's most widely developed personal location system for
18 mobile handsets."

19 50. From 2002 to 2005, the number of gpsOne™-enabled devices in use in the world
20 skyrocketed from 5 million to 150 million. Qualcomm claimed that it is "the most widely-
21 developed GPS technology in the world."

1 **Krasner, SnapTrack, and Qualcomm Misappropriate Gabriel's Technology.**

2 51. Unbeknownst to Locate, Krasner decided to take Locate's intellectual property
3 and inventions and patent them as if he were the actual inventor. Although SnapTrack was
4 focused on aGPS and the broadband market, Krasner filed patent applications relating to the
5 narrowband market upon which Locate was focused that were more valuable and applicable to
6 the broadband market upon which SnapTrack was focused.

7 52. One example of Krasner filing patents based on enabling technology developed
8 by Locate occurred in March 1999. During the negotiations culminating in the License
9 Agreement, Locate discussed its past experience in narrowband and solutions to problems it had
10 encountered and which were applicable to telecommunications more broadly. Krasner, without
11 telling Locate's founders that he was doing so, filed a provisional patent application
12 incorporating Locate's technology under his own name prior to the execution of the License
13 Agreement.

14 53. Upon information and belief, Krasner filed the provisional patent application to
15 add value to SnapTrack's patent portfolio for a potential purchaser (like Qualcomm) as well as to
16 put additional arrows in its quiver for future battles with its competitors. Of course, Locate had
17 no reason to believe that Krasner was improperly filing patent applications for which he was not
18 the inventor.

19 54. After entering into the License Agreement, Krasner continued his practice of
20 "ghost writing" patents by filing patent applications relating to Program Technology and naming
21 either Krasner as a sole inventor or Krasner and other SnapTrack engineers as joint inventors.
22 No Locate employees were listed as inventors.

1 55. While filing these patent applications, Krasner and SnapTrack did not (i) inform
2 Locate that Program Technology existed or (ii) follow the procedures required by the License
3 Agreement regarding Program Technology and intellectual property filings. Because these
4 patent applications were not disclosed to Locate, it was not aware of Krasner and SnapTrack's
5 clandestine filings relating to technology solely owned or jointly owned by Locate.

6 56. Following Krasner's lead, Qualcomm filed patent applications relating to Program
7 Technology and named San Diego-based Qualcomm engineers as inventors instead of Locate (or
8 Gabriel) employees. Again, because these patent applications were not disclosed to Locate, it
9 was not aware of these unpublished filings relating to technology solely owned or jointly owned
10 by Locate.

11 57. Locate's jointly-owned Program Technology was misappropriated by Krasner,
12 SnapTrack, and Qualcomm in multiple ways:

13 i) Krasner, SnapTrack, and Qualcomm filed new patent applications that
14 incorporated Program Technology;

15 ii) Krasner, SnapTrack, and Qualcomm included the Program Technology in
16 continuation-in-part patent applications;

17 iii) Krasner, SnapTrack, and Qualcomm broadened patent claims in pending
18 patent application to encompass the Program Technology; and

19 iv) Krasner, SnapTrack, and Qualcomm failed to credit Locate as an assignee
20 or Locate employees as co-inventors.

21 58. At least ninety-two (92) U.S. and foreign patents and patent applications filed by
22 Krasner, SnapTrack, and Qualcomm are based upon—in whole or in part—Program Technology,
23
24
25

1 Locate's sole intellectual property, or both. These patents and patent applications can be
2 grouped into at least thirteen (13) core inventions.

3 59. Nine (9) of at least thirteen (13) core inventions are embodied in the following
4 U.S. patents (and related foreign patents or applications):

5 Patent Nos. 6,377,209 and 6,583,757 ("the '209 and '757 Patents") and six (6)
6 related PCT/foreign patents, including WO2000057203, EP1171779, MXPA01009528,
7 CN1344372, CA2367032, and AU773464;

8 Patent No. 6,661,372 ("the '372 Patent");

9 Patent No. 6,799,050 ("the '050 Patent");

10 Patent No. 6,861,980 ("the '980 Patent") and six (6) related PCT/foreign patents,
11 including AU2005250882, BRPI0511499, CN1957264, EP1749215, JP2008500543, and
12 WO2005119287;

13 Patent No. 6,895,249 ("the '249 Patent") and ten (10) related PCT/foreign patents,
14 including AU777646B, AU7689401, BR0106971, CA2383685, CN1201627, EP1302081,
15 HK1050606, JP2004504614, MXPA02002692, and WO0207458;

16 Patent No. 7,254,402 ("the '402 Patent") and ten (10) related PCT/foreign patents,
17 including AU1534202, AU2002215342, CA2425547, CN1608211, EP1330662, IL155206,
18 JP4018535B2, JP2007306588, MXPA03003208, and WO0231526;

19 Patent No. 7,289,786 ("the '786 Patent") and U.S. Application Serial No.
20 11/538,436 ("the '436 Application") and six (6) related PCT/foreign patents, including
21 CN1762173, EP1588578, JP2007521712, KR20050090461, MXPA05007633, and
22 WO2004066665;

1 Patent No. 7,319,876 ("the '876 Patent") and ten (10) related PCT/foreign patents,
2 including AU2003270026, BR0313697, CA2496460, CN1689365, EP1532833, JP2005537709,
3 KR20050040131, MXPA05002231, RU2005108595, and WO2004019650; and

4 Patent No. 7,421,277 ("the '277 Patent") and related U.S. Application Serial No.
5 11/377,856 ("the '856 Application").

6 60. The remaining four (4) core inventions are embodied in the following U.S. patent
7 applications (and related foreign patents or applications):

8 Application Serial No. 10/418,799 ("the '799 Application") and ten (10) related
9 PCT/foreign patents, including AU2003301350, BR0315350, CA2501268, CN1705894,
10 EP1552323, JP2006504110, KR20050051695, MXPA05003921, RU2005114912, and
11 WO2004036240;

12 Application Serial No. 10/792,062 ("the '062 Application") and nine (9) related
13 PCT/foreign patents, including BRPI0408017, CA2517800, CN1778127, EP1600020,
14 JP2006521767, KR20050104420, MXPA05009417, RU2005130765, and WO2004080096;

15 Application Serial No. 10/956,409 ("the '409 Application") and two (2) related
16 PCT/foreign patents, including BRPI0512122 and WO2006009712; and

17 Application Serial No. 10/961,986 ("the '986 Application") and seven (7) related
18 PCT/foreign patents, including CA2463543, CN1602636, EP1435184, IL161315,
19 JP2005537690, KR20050035147, and WO03032662.

20 61. These patents and patent applications should name Locate employees as the sole
21 inventors or, at the very least, as joint inventors.

22 62. By filing these patent applications and obtaining these patents, Krasner,
23 SnapTrack, and Qualcomm obtained valuable technology without paying for it. The
24
25

1 procurement of these issued patents has unfairly allowed SnapTrack and Qualcomm to create
2 barriers of entry to third-party competition in the aGPS market that was not rightfully theirs to
3 use and from which to benefit. Upon information and belief, Qualcomm licenses these patents to
4 industry leaders as part of its patent portfolio and lucrative business model. Because Gabriel did
5 not—and still does not—have access to Qualcomm's license agreements, it was not aware of any
6 licensing of patents that should have listed Locate employees as sole or joint inventors.

7 63. In addition to filing patents based on Locate's inventions, upon information and
8 belief, Krasner has filed patents relating to wireless network technology which was likely
9 developed by companies other than SnapTrack or Qualcomm. Examples of such suspicious
10 patents include U.S. Patent Nos. 6,937,872 and 6,665,541.

11 64. Qualcomm's clandestine activities in obtaining the patents have forced aGPS
12 users and providers to either obtain a license from Qualcomm or attempt to design around these
13 patents. Thus, Qualcomm was able to represent ownership of and control barriers to entry in the
14 marketplace that were not its own.

15 **The Specific Patents and Patent Applications.**

16 65. Krasner, SnapTrack, and Qualcomm filed the patents and patent applications
17 listed above without listing Locate or any of its employees as having any inventorship or
18 ownership rights. As summarized below, Locate employees contributed to each of these patents
19 and patent applications and, in most cases, were the sole inventors.

20 **The '209 Patent and the '757 Patent**

21 66. The '209 Patent and the '757 Patent list Krasner as the sole inventor.

22 67. In January and February 1999, during preliminary discussions between SnapTrack
23 and Locate, Locate identified its experience with latency problems in networks like the ReFLEX
24
25

1 paging network, which latencies are significantly greater than the latencies in any other type of
2 wireless transmission network.

3 68. These problems were not known to Krasner or SnapTrack until these discussions
4 with Locate, and Locate even provided the solution to these latency issues.

5 69. As part of his efforts to make SnapTrack's patent portfolio as valuable as possible
6 to potential buyers, Krasner took Locate's technology and patented it under his own name.

7 The '372 Patent

8 70. The '372 Patent only lists Richard Girerd and Krasner as inventors.

9 71. The '372 Patent was broadened during prosecution to cover new types of
10 acquisition assistance information having reduced satellite information payloads.

11 72. The new types of acquisition assistance information were contributed as Program
12 Technology by Locate engineers.

13 73. Rather than amending the patent application of the '372 Patent, the new
14 acquisition assistance technique should have been included in either a new patent application or,
15 if possible, in a continuation-in-part (CIP) patent application, which should have named Locate
16 employees as inventors.

17 The '050 Patent

18 74. The '050 Patent lists Krasner as the only inventor.

19 75. The '050 Patent resolves conflicts between transmission to a terrestrial network
20 and reception from GPS satellites.

21 76. The Locate location pager implements a mechanism that resolves similar conflicts
22 to those addressed in the '050 Patent.

1 77. In addition, the user-initiated conflict resolution mechanism is illustrated and
2 discussed in multiple Locate documents that pre-date the filing of the '050 Patent by more than a
3 year.

4 The '980 Patent

5 78. Claim 1 of the '980 Patent is directed to a method for messaging position-based
6 information in an assisted wireless position determination system. Qualcomm employees
7 Rowitch and Patrick are listed as inventors.

8 79. The elements of Claim 1 are disclosed in the Locate document entitled "Location
9 Message Handling Protocol" (LMHP), dated November 2002, and in the Locate document
10 entitled "Sputnik Software Functional Specifications" ("Sputnik"), dated December 2000. Both
11 of these documents pre-date the May 26, 2004 filing of the '980 patent.

12 The '249 Patent

13 80. The '249 Patent lists Gaal, a Qualcomm employee, as the only inventor. That
14 patent uses position location data classifications to determine a broadcast schedule.

15 81. The LS-GF IF Specification, dated December 15, 1999, which SnapTrack had in
16 its possession, discloses the broadcasting of acquisition assistance information. A June 1999
17 letter discusses a location dependent simulcast of unique satellite data, and a September 1999 e-
18 mail discusses a meeting about the immediate need for a broadcast data aging analysis.

19 82. Thus, Locate provided the details of the broadcast method claimed in the '249
20 Patent well prior to the July 10, 2001 filing of the patent.

1 The '402 Patent

2 83. The '402 Patent lists Vayanos, a Qualcomm employee, as the first-named
3 inventor. Samir Soliman, another Qualcomm employee who was a member of the SnapTrack
4 due diligence team, is also listed as an inventor.

5 84. The Locate paging network delivers acquisition assistance information either in a
6 broadcast mode to all location pagers in a GPS zone or in a targeted mode to a targeted location
7 pager in a single base station coverage area.

8 85. In addition, documents authored by Locate in 1999 disclose relevant information
9 regarding the acquisition assistance information discussed in the '402 Patent. Specifically,
10 claims of the '402 Patent recite limitations regarding the GPS code phase search range shown in
11 the Locate documents.

12 86. Because Qualcomm was a member of a standard-setting subcommittee and
13 because Vayanos represented Qualcomm on that committee, if Vayanos were truly the inventor
14 of the '402 Patent, the patent should have been disclosed prior to the balloting and publication of
15 the relevant standard.

16 87. However, Qualcomm did not make a declaration of intellectual property rights
17 and licensing until after publication of the standard.

18 88. Locate, as the sole inventor of this patent, may not have been obligated to declare
19 the patent to the standard setting organization or to grant licenses under favorable terms to
20 standard members.

1 The '786 Patent and the '436 Application

2 89. The '786 Patent and the '436 Application list Krasner as the sole inventor and
3 relate to a "method and apparatus for communicating emergency information using wireless
4 devices."

5 90. Locate documents that pre-date the filing of the '786 Patent and the '436
6 Application illustrate the triggering of an alert on the location pager and the transmission of an
7 alert message to an emergency center. Other Locate documents supporting inventorship include
8 an internal e-mail and memorandum.

9 91. Claims of the '786 Patent and the '436 Application recite limitations that are
10 shown in these documents.

11 The '876 Patent

12 92. Claim 1 of the '876 Patent, which has a priority date of August 26, 2002, is
13 directed to a location services apparatus for providing location services to a mobile station.
14 Qualcomm employees Jha and Grilli are listed as the inventors.

15 93. The Sputnik document discloses the elements of Claim 1 and pre-dates the
16 priority date of the '876 Patent.

17 The '277 Patent and the '856 Application

18 94. Claim 1 of the '277 Patent, which has a priority date of February 5, 2004, is
19 directed to a method of performing position determination in a network. Qualcomm employee
20 Burroughs is listed as the inventor.

21 95. Elements of the '277 Patent and the '856 Application are disclosed in the Sputnik
22 document, the Locate document entitled "Location Message Handling Protocol" (LMHP), dated
23 November 2002, and other Locate documents.

1 The '799 Application

2 96. Claim 1 of the '799 Application, which has a priority date of October 17, 2002, is
3 directed to a method of determining a position estimate for a wireless terminal. Leonid Sheynblat
4 is listed as the inventor.

5 97. Claim 1 encompasses a Locate method of improving the location estimation in the
6 network and is disclosed in the Sputnik document.

7 The '062 Application

8 98. Claim 1 of the '062 Application, which has a priority date of March 5, 2003, is
9 directed to a method of providing location services. Wang, Sheynblat, Agahse, Gollens, and Hsu
10 are listed as the inventors on the '062 Application.

11 99. The Sputnik document and other Locate documents describe the functionality
12 discussed in the '062 Application.

13 The '409 Application

14 100. The '409 Application relates to tracking lost and stolen mobile devices using
15 unique equipment identifiers. Anjali Jha, a Qualcomm employee, and Krasner are listed as the
16 inventors.

17 101. Claims in the '409 Application recite limitations regarding the tracking of a
18 targeted mobile station based on status information. These limitations were taught in various
19 documents provided to SnapTrack by Locate.

20 The '986 Application

21 102. The '986 Application establishes permission criteria to allow others to track the
22 location of a mobile device. Krasner and Sheynblat are listed as the inventors.

1 103. Multiple Locate documents, which pre-date the filing of the '986 Application,
2 define creating permissions for users, and the claims of the '986 Application recite limitations
3 that are shown in those documents.

4 104. The above-discussed patents and patent applications read on the following
5 Qualcomm/SnapTrack products and services: the SnapTrack Position Determination Module
6 software, the Qualcomm QPoint server, the GlobalWARN system, the inGeo device, the Brew
7 Location Signature Solution server, the Qualcomm MedioFlo network, and/or any product
8 incorporating Qualcomm's gpsOne technology.

9 **Qualcomm Continues Its Wrongdoing.**

10 105. Despite Qualcomm's protestations to Gabriel that Locate did not have people who
11 contributed to the inventions or the patents at issue, Gabriel learned that Qualcomm, through an
12 entity called Qualcomm Ventures, considered an investment in Locate and later pursued a buyout
13 of Locate, including all of Locate's hardware, software, key personnel (both current and former),
14 and intellectual property rights. During the due diligence of that proposed transaction,
15 Qualcomm had access to Locate's financial information and other valuable company
16 information. Qualcomm did not consummate the buyout nor did Qualcomm inform Locate of its
17 potential ownership interest in portions of the SnapTrack patent portfolio.

18 106. After Qualcomm's failed attempt to buy Locate and its intellectual property
19 rights, in or around June 2004, SnapTrack and Qualcomm presented Trace, the successor-in-
20 interest to Locate's assets, with an Amended and Restated License Agreement. The proposed
21 Amended and Restated License Agreement stated that it "supersedes and replaces in its entirety
22 the prior License Agreement made and entered as of August 20, 1999, as amended, by and
23
24
25

1 between [SnapTrack] and Trace Technologies LLC, as successor-in-interest to substantially all
2 of the assets of Locate Networks, Inc.”

3 107. Neither SnapTrack nor Qualcomm informed Trace that they had filed patent
4 applications incorporating Locate’s intellectual property without listing Locate personnel as
5 inventors. To the contrary, representatives of SnapTrack and Qualcomm fraudulently concealed
6 that information from Gabriel and falsely claimed that no Program Technology existed under the
7 License Agreement. Representatives of SnapTrack and Qualcomm further falsely claimed that
8 the sole purpose of presenting the Amended and Restated License Agreement was to standardize
9 the prior License Agreement to the form now used by Qualcomm.

10 108. The provisions of the proposed Amended and Restated License Agreement were
11 significantly different from the License Agreement entered into by SnapTrack and Locate. First,
12 the proposed Amended and Restated License Agreement deleted section 8(b) of the License
13 Agreement which stated that “[a]ll Program Technology was jointly owned by the parties.”
14 Second, the proposed Amended and Restated License Agreement stated:

15 Trace hereby grants, on behalf of itself and its Affiliates, to [SnapTrack] an
16 irrevocable, perpetual, nonexclusive, paid-up, royalty-free, worldwide license
17 under the Necessary IP of Trace and its Affiliates, without the right to sublicense
(except to [SnapTrack]’s Affiliates, and by [SnapTrack] and/or its Affiliates to
18 their direct and indirect customers) in order to use, make, have made, sell, offer to
sell, lease, offer to lease, and import the Software.

19 109. Necessary IP was defined in the proposed Amended and Restated License
20 Agreement as “all Intellectual Property Rights which are essential or commercially necessary to
21 the development, manufacture, use, sale or distribution of licenses or other rights to Software in
22 order to comply with the specifications of the location services portion of any wireless
23 communications standard adopted for any air interface by any nation.”
24
25

1 110. By the deletion of the joint ownership provision of the License Agreement and the
2 inclusion of a broadly-defined license from Trace to SnapTrack, SnapTrack and Qualcomm
3 attempted to transfer Locate's existing intellectual property rights to themselves.

4 111. As part of the proposed Amended and Restated License Agreement, SnapTrack
5 and Qualcomm also requested that Trace pay approximately \$342,000 in additional fees and
6 costs. Knowing quite well what they had done with Locate's intellectual property over the past
7 few years, SnapTrack and Qualcomm kindly offered to waive these fees if Gabriel would just
8 sign the Amended and Restated License Agreement.

9 112. In April 2005, when Trace inquired as to whether any Program Technology or
10 related intellectual property filings existed, Qualcomm's Senior Legal Counsel Phillip Fries
11 responded that Qualcomm would only address those issues after Trace paid certain fees to
12 SnapTrack or signed the proposed Amended and Restated License Agreement. Although
13 Qualcomm did agree that the change regarding joint ownership rights would only apply
14 prospectively, Qualcomm still did not acknowledge or identify Locate's contributions. In point
15 of fact, Fries indicated that Locate was a "sales" team without engineering capability.

16 113. In August 2005, counsel for Gabriel met with Greenhaus. During that meeting,
17 Greenhaus explained that he had been part of the original Qualcomm team involved in the
18 valuation of SnapTrack and that as part of the acquisition, he knew SnapTrack's patent portfolio
19 very well. To begin that meeting, Greenhaus stated that Locate did not make any contribution to
20 SnapTrack's patent portfolio. By the end of the meeting, Greenhaus stated that he may have
21 been wrong and that steps needed to be taken to verify several points.

22 114. After the meeting, Greenhaus, knowing at that time that Gabriel lacked needed
23 capital, continued to conceal Krasner, SnapTrack, and Qualcomm's fraud and misappropriation
24
25

1 by claiming that Locate did not contribute any technology and that no Program Technology
2 existed. However, SnapTrack and Qualcomm did not provide Locate access to any inventor
3 notebooks or other information exclusively in their possession regarding any inventions or patent
4 filings. Greenhaus had promised to do so and then purposefully delayed in the hopes of
5 bankrupting Gabriel.

6 115. In October 2005, Qualcomm Senior Director Brian Salisbury again requested that
7 Trace sign the Amended and Restated License Agreement. He also reiterated Qualcomm's
8 position that no SnapTrack patents were jointly owned by Locate.

9 116. Over a period of years, Krasner, SnapTrack, and Qualcomm failed to disclose and
10 actively misled Locate about the existence of Program Technology and related intellectual
11 property filings. When Gabriel attempted to discover whether and what Program Technology
12 existed, Qualcomm refused to provide any information regarding Program Technology or related
13 intellectual property filings and outright claimed that no Program Technology existed. To date,
14 Qualcomm has refused to provide information regarding patent filings on the grounds that such
15 information is confidential and/or privileged.

16 117. Despite SnapTrack and Qualcomm's false representations about the existence of
17 Program Technology or any patents or patent applications based on Program Technology, Trace
18 refused to sign the proposed Amended and Restated License Agreement.

19 118. After refusing to sign the proposed agreement, Trace retained intellectual property
20 counsel to review published patents and patent applications filed worldwide by Krasner,
21 SnapTrack, and Qualcomm to determine whether any were based on Program Technology.
22 SnapTrack is listed as an assignee on 55 patents. Qualcomm has filed approximately 6,500 U.S.
23
24
25

1 patent applications and is listed as an assignee on approximately 2,345 issued domestic patents,
2 of which almost 2,000 issued during the last eight years.

3 119. Over time, as the patents and patent applications discussed above matured and
4 were published and Gabriel obtained access to them, Gabriel began reviewing these documents.
5 Because Locate was no longer in business, Gabriel interviewed people familiar with Locate and
6 its business as well as the business relationship with SnapTrack. Gabriel also searched for
7 documents relating to Locate that may discuss Locate technology or inventions. Gabriel then
8 compared this information against the patent filings in an effort to determine whether Locate
9 contributed to these filings.

10 120. Without access to SnapTrack's purported inventors' notebooks and others
11 materials that are in the possession of Krasner, SnapTrack, and Qualcomm, Gabriel was only
12 able to discover certain patents that incorporate Locate's pre-existing technology and jointly-
13 owned Program Technology. Upon information and belief, other patents and patent applications
14 in addition to those identified thus far likely incorporate Locate's pre-existing technology and
15 jointly-owned Program Technology. Upon information and belief, Gabriel has uncovered
16 preliminary evidence that indicates that Krasner and SnapTrack may have misappropriated other
17 parties' intellectual property rights in a manner very similar to that used against Locate.

18 121. Gabriel presented information concerning its intellectual property claims to
19 Qualcomm and its Board of Directors in June 2007. To the best of Gabriel's knowledge,
20 Qualcomm has taken no steps to correct the inventorship issues or otherwise address the
21 misappropriation of Locate's technology and intellectual property.

22 122. All conditions precedent to recovery have occurred.
23
24
25

123. Gabriel's claims are timely filed because: (1) the applicable statutes of limitations have not expired; (2) the parties entered into multiple tolling agreements; and/or (3) the doctrines of fraudulent concealment, discovery rule, equitable tolling, and/or equitable estoppel preclude defendants from raising statutes of limitations as a defense.

V. CAUSES OF ACTION

COUNT ONE: Breach of the License Agreement

124. Gabriel repeats and realleges the allegations above.

125. Locate and SnapTrack entered into the License Agreement.

126. Locate performed under the License Agreement and/or was excused from not performing because of SnapTrack's prior material breaches.

127. SnapTrack breached the License Agreement when it, among other things, (1) took ownership of Locate's patents, trade secrets, copyrights, and other Intellectual Property Rights that were in existence as of the Effective Date; (2) took and destroyed Locate's joint ownership interest in Program Technology; (3) failed to establish a process for identifying all Program Technology Intellectual Property Rights; (4) failed to establish a process for determining which intellectual property filings to make with respect to such Program Technology; and (5) filed patent applications and patents without listing Locate as an assignee or inventor.

128. SnapTrack breached the License Agreement in secret by, among other things, not disclosing its patent filings relating to both Locate's technology and Program Technology. The harm flowing from SnapTrack's breaches was not reasonably discovered by Gabriel until a future time as discussed above.

129. As a result of SnapTrack's breaches, Gabriel has suffered damages for which it seeks recovery.

1 COUNT TWO: Fraud and Fraudulent Inducement

2 130. Gabriel repeats and realleges the allegations above.

3 131. Krasner, acting on behalf of himself and on behalf of SnapTrack, intentionally
4 and knowingly misrepresented that Locate would jointly own Program Technology and that
5 Locate would retain its own intellectual property. In addition, Krasner, SnapTrack, and
6 Qualcomm intentionally and knowingly failed to disclose that they were misappropriating
7 Locate's technology and filing patents and patent applications incorporating jointly-owned
8 Program Technology as well as Locate's technology. Even when specifically asked, Qualcomm
9 claimed that no Program Technology existed.

10 132. Krasner, SnapTrack, and Qualcomm intended to induce Gabriel to rely on the
11 misrepresentations and/or concealment.

12 133. Gabriel justifiably relied on the misrepresentations and/or the undisclosed
13 information by, among other things, entering into and performing under the License Agreement.
14 Furthermore, because of Krasner, SnapTrack, and Qualcomm's false representations and
15 concealment, Gabriel did not immediately become aware of their wrongful acts with respect to
16 Locate's intellectual property.

17 134. As a result of Krasner, SnapTrack, and Qualcomm's fraud, Gabriel has suffered
18 damages for which it seeks recovery.

19 135. Because Krasner, SnapTrack, and Qualcomm are guilty of fraud, oppression,
20 and/or malice, Gabriel also seeks exemplary damages.

21 COUNT THREE: Tortious Interference with Contract

22 136. Gabriel repeats and realleges the allegations above.

23
24
25

1 137. Locate and SnapTrack entered into the License Agreement, a valid and
2 enforceable agreement.

3 138. Krasner and Qualcomm were aware of the existence of the License Agreement.

4 139. As discussed above, Krasner and Qualcomm intentionally caused SnapTrack to
5 breach the License Agreement, and as a result, SnapTrack did breach the License Agreement.

6 140. As a result of Krasner and Qualcomm's tortious interference, Gabriel has suffered
7 damages for which it seeks recovery.

8 141. Because Krasner and Qualcomm are guilty of fraud, oppression, and/or malice,
9 Gabriel also seeks exemplary damages.

10
11 COUNT FOUR: Correction of Inventorship (Pursuant to 35 U.S.C. § 256)

12 142. Gabriel repeats and realleges the allegations above.

13 143. As discussed above, Krasner and representatives of SnapTrack and Qualcomm
14 applied for and were issued U.S. Patents based on the representation that they were the inventors.

15 144. This representation was false, because Krasner, SnapTrack, and Qualcomm failed
16 to disclose that representatives of Locate conceived of claims in the patents and were the true
17 inventors.

18 145. At all relevant times, Locate was without deceptive intent and was unaware of and
19 played no role in any deception by Krasner, SnapTrack, and Qualcomm.

20 146. Pursuant to 35 U.S.C. § 256, the patents should be corrected to reflect that
21 representatives of Locate/Gabriel are the sole inventors or at the very least, co-inventors.

22 COUNT FIVE: Declaratory Judgment Of Ownership Interest In The Patents (Pursuant to 28
23 U.S.C § 2201)

24 147. Gabriel repeats and realleges the allegations above.

1 148. Gabriel seeks a declaratory judgment that Gabriel has an ownership interest in and
2 to the above-listed patents.

3 149. There is a substantial and continuing justiciable controversy between Gabriel and
4 Krasner, SnapTrack, and Qualcomm as to Gabriel's ownership interest in and to the patents.

5 150. A valid case and controversy exists sufficient for this Court to declare the rights
6 and remedies of the parties, because there is a dispute between the parties as to the ownership of
7 valuable technology and related patents.

8 151. This controversy is ripe for determination at this time because the parties dispute
9 ownership of valuable technology and related patents and because those patents have been issued
10 by the USPTO.

11 152. Gabriel has the requisite standing to request this declaration in that Gabriel
12 conceived of and owns such technology, but Krasner, SnapTrack, and Qualcomm utilized these
13 contributions made by Gabriel without payment and/or acknowledgment of inventorship and
14 ownership rights.

15 153. To resolve this controversy, Gabriel requests that the Court declare the respective
16 rights and duties of the parties in this matter and, in particular, that Gabriel is the owner of
17 certain technology and patents.

18 COUNT SIX: Equitable Patent Infringement

19 154. Gabriel repeats and realleges the allegations above.

20 155. As alleged above, Gabriel is the true owner of certain patents currently assigned
21 to SnapTrack and/or Qualcomm.
22
23
24
25

1 156. SnapTrack and Qualcomm have infringed those patents by making, selling, using,
2 offering to sell, and/or importing patented products and will continue to do so unless enjoined by
3 this Court.

4 157. As a result of SnapTrack and Qualcomm's infringement, Gabriel is entitled to
5 permanent injunctive relief restraining and enjoining SnapTrack and Qualcomm and all those in
6 privity with or acting in concert with them from manufacturing, selling, or offering for sale any
7 products that infringe, contributorily infringe, or induce the infringement of the patents owned by
8 Gabriel. To the extent legally and equitably available, Gabriel also seeks an accounting for
9 damages and/or damages related to SnapTrack and Qualcomm's past infringement.

10 COUNT SEVEN: Misappropriation (Pursuant to California Uniform Trade Secrets Act)

11 158. Gabriel repeats and realleges the allegations above.

12 159. Locate's confidential and proprietary information as well as Program Technology
13 derived independent economic value from not being generally known to the public or to other
14 persons who could obtain economic value from its disclosure or use.

15 160. Locate took reasonable efforts under the circumstances to maintain the secrecy of
16 its confidential and proprietary information.

17 161. Krasner, SnapTrack, and Qualcomm misappropriated Locate's confidential and
18 proprietary information as well as Program Technology by (i) acquiring the information by
19 improper means and (ii) disclosing or using the information without Locate's consent.

20 162. As the direct and proximate result of Krasner, SnapTrack, and Qualcomm's
21 misappropriation, Gabriel suffered actual loss for which it seeks recovery and seeks recovery of
22 the unjust enrichment caused by the misappropriation. In the alternative, Gabriel seeks a
23 reasonable royalty.

1 163. Because Krasner, SnapTrack, and Qualcomm willfully and maliciously
2 misappropriated Locate's confidential and proprietary information, Gabriel is entitled to an
3 award of exemplary damages and attorneys' fees and costs.

4 164. Because its remedy at law is inadequate, Gabriel seeks injunctive relief to enjoin
5 defendants' misappropriation.

6 COUNT EIGHT: Conversion

7 165. Gabriel repeats and realleges the allegations above.

8 166. Locate owned valuable enabling technology and a joint ownership interest in
9 Program Technology.

10 167. Krasner, SnapTrack, and Qualcomm—through their patent filings and other
11 acts—converted that technology and Program Technology for themselves.

12 168. Accordingly, Gabriel has suffered damages for which it seeks recovery.

13 169. Because Krasner, SnapTrack, and Qualcomm are guilty of fraud, oppression,
14 and/or malice, Gabriel also seeks exemplary damages.

15 COUNT NINE: Unfair Competition (Pursuant to Cal. Bus. & Prof. Code § 17200)

16 170. Gabriel repeats and realleges the allegations above.

17 171. Krasner, SnapTrack, and Qualcomm's actions constitute unlawful, unfair, and
18 fraudulent business acts or practices. Among other things, Krasner, on behalf of himself and
19 SnapTrack, fraudulently and deceptively misrepresented that Locate would jointly own Program
20 Technology. In addition, Krasner, SnapTrack, and Qualcomm fraudulently and deceptively
21 failed to disclose that they were misappropriating Locate's technology and Program Technology,
22 and they filed patents and patent applications incorporating Locate's technology and jointly
23 owned Program Technology.

1 172. Such misrepresentations and misappropriation were fraudulent because they were
2 likely to and have deceived Gabriel and the general public about the ownership and inventorship
3 of Program Technology and the patents referenced above.

4 173. Krasner, SnapTrack, and Qualcomm's actions are unfair in that they threaten an
5 incipient violation of antitrust law, violate the spirit of anti-trust laws, and/or otherwise
6 significantly threaten and/or harm competition. Among other things, Qualcomm licensed the
7 improperly obtained patents and used them to create barriers of entry for its competitors.

8 174. Moreover, Krasner, SnapTrack, and Qualcomm's misappropriation of Locate's
9 technology and Program Technology constitute unlawful business acts and/or practices.

10 175. Because Gabriel has suffered an injury in fact and has lost money and property as
11 a result of the unfair competition, Gabriel is entitled to injunctive relief under Cal. Bus. & Prof.
12 Code § 17203.

13 COUNT TEN: Unjust Enrichment

14 176. Gabriel repeats and realleges the allegations above.

15 177. Locate is and was the owner of valuable enabling technology as well as various
16 related patents.

17 178. Krasner, SnapTrack, and Qualcomm misappropriated Locate's technology by
18 applying for and obtaining patents based on that technology and Program Technology.

19 179. Upon information and belief, Qualcomm has provided third parties with licenses
20 to patents based on Locate's technology and Program Technology, and SnapTrack and
21 Qualcomm have utilized Locate's technology and Program Technology in products designed or
22 sold by them.

1 180. The improper use and incorporation of Locate's technology and Program
2 Technology has caused Gabriel to suffer an impoverishment, and Krasner, SnapTrack, and
3 Qualcomm's use of Locate's technology has caused them to be unjustly enriched.

4 181. Krasner, SnapTrack, and Qualcomm have no justification for the unjust
5 enrichment, and no reason exists to allow them to retain the benefit without payment to Gabriel.

6 182. Accordingly, Gabriel has suffered damages for which it seeks recovery.

7 **VI. JURY REQUEST**

8 183. Gabriel requests a jury trial on all issues so triable.

9 **VII. REQUEST FOR RELIEF**

10 184. WHEREFORE Gabriel Technologies Corporation and Trace Technologies, LLC
11 respectfully request that the Court:

12 A. Enter judgment against Krasner, SnapTrack, and Qualcomm for actual,
13 consequential, and compensatory damages suffered by Gabriel in an amount exceeding \$1
14 billion;

15 B. Enter judgment against Krasner, SnapTrack, and Qualcomm for
16 exemplary damages;

17 C. Enter judgment correcting ownership and inventorship of the patents and
18 order the USPTO to so correct ownership and inventorship;

19 D. Enter declaratory judgment that Gabriel is the owner of certain technology
20 and patents discussed above;

21 E. Enter judgment finding infringement by SnapTrack and/or Qualcomm of
22 Gabriel's patents;

1 F. Enter preliminary and permanent injunctive relief preventing Krasner,
2 SnapTrack, and Qualcomm from using Gabriel's confidential and proprietary information,
3 technology, and patents;

4 G. Award Gabriel attorneys' fees and costs;

5 H. Award Gabriel pre-judgment and post-judgment interest at the highest
6 rates allowed by law; and

7 I. Grant Gabriel such other and further relief to which it may be entitled at
8 law or equity.

9 Respectfully submitted,

10
11 By: 

Brian C. Gonzalez
State Bar No. 140348
LAW OFFICES OF BRIAN C. GONZALEZ
2533 S. Coast Highway 101, Suite 250
Cardiff by the Sea, California 92007
Telephone: (760) 436-9529
Facsimile: (760) 436-4895

15 William A. Munck
16 Texas State Bar No. 00786127
E. Leon Carter
17 Texas State Bar No. 03914300
Jamil N. Alibhai
18 Texas State Bar No. 00793248
John T. Mockler
19 Texas State Bar No. 00789495
J. Robert Arnett
20 Texas State Bar No. 01332900
MUNCK CARTER, P.C.
21 600 Banner Place
22 12770 Coit Road
23 Dallas, Texas 75251
24 Telephone: (972) 628-3600
25 Facsimile: (972) 628-3616

FAXED

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Gabriel Technologies Corporation and Trace Technologies, LLC

(b) County of Residence of First Listed Plaintiff Douglas
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Law Offices of Brian C. Gonzales, 2533 S Coast Hwy 101, #250,
Cardiff by the Sea, CA 92007, T: (760) 436-9529

DEFENDANTS

Qualcomm Incorporated, SnapTrack, Inc., and Norman Krasner

County of Residence of First Listed Defendant San Diego
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

08 CV 1992 BEN NLS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ PTF ☐ DEF
- Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
--	--	--	--	---	--

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. §§ 2201 & 2202Brief description of cause:
Declaratory judgment, correction of inventorship, patent ownership

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

\$1 Billion +

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See Instructions):

JUDGE

DOCKET NUMBER

DATE

10-24-08

SIGNATURE OF ATTORNEY OF RECORD

Brian Gonzales

FOR OFFICE USE ONLY

RECEIPT # 194485AMOUNT \$350

10/27/08 BH

APPLYING IFP

JUDGE

MAG. JUDGE

**UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION**

156485 - BH

**October 27, 2008
16:24:12**

Civ Fil Non-Pris

USAO #: 08CV1992 CIVIL FILING
Judge...: ROGER T BENITEZ
Amount.: \$350.00 CK
Check#.: BC#73069

Total-> \$350.00

**FROM: GABRIEL TECH ET AL V. QUALCOMM
CIVIL FILING**